

In the Matter of License No. 268234 Merchant Mariner's Document No.  
Z-358397

Issued to: William A. McLachlen

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1391

William A. McLachlen

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 13 August 1962, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for 3 months outright plus 3 months on 12 months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a Third Assistant Engineer on board the United States SS GREEN HARBOUR under authority of the license above described, on 5 May 1962, Appellant assaulted and battered a member of the crew and thereafter engaged in a fist fight with the same crew member. A third specification was found not proved.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence excerpts from the Official Logbook and the testimonies of several witnesses. Appellant introduced in evidence his own testimony and that of another crew member.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved.

FINDINGS OF FACT

On 5 May 1962, Appellant was serving as a Third Assistant Engineer on board the United States SS GREEN HARBOUR and acting under authority of his documents while the ship was in the port of Bombay, India.

Appellant was assigned to stand the 0000 to 0800 engine room watch on the 5th of May. About 2330 the Oiler on the vessel went

to Appellant's cabin in order to notify him of the watch. Being unable to arouse Appellant, the Oiler returned to the engine room and notified Third Assistant Engineer Tindell (who had the 1600 to 2400 watch) that he could not awaken Appellant. Tindell then left his duty station and proceeded to Appellant's cabin which he attempted to enter but a hook on Appellant's door prohibited him from doing so. Tindell then reached through the partially opened cabin door, turned on a light switch, and called to Appellant several times to get up. Having been unsuccessful, Tindell proceeded to knock on Appellant's door and finally awakened him. Appellant rose from bed, opened the door, and struck Tindell in the face with the heel of his hand.

Tindell, thereafter, invited Appellant to step out on deck. Appellant agreed to this invitation and a fist fight between the two men followed.

PRIOR RECORD: October 1957, 6 months suspension on 12 months probation for use of profane and abusive language to the Chief Officer, and assault and batter of the Chief Officer. SS STEEL TRAVELER.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the findings of guilty of the charge and specifications are not supported by the law and evidence of the case; that Appellant's testimony should be accepted since the Examiner rejected the testimony of Tindell that there were two fist fights rather than one; and that in the alternative the order of the Examiner is too severe under the circumstances.

APPEARANCE: Harold J. Lamy, Esquire, of Dodd, Hirsh, Barker and Meunier of New Orleans.

#### OPINION

In view of Appellant's own admission that he took part in a fist fight with Tindell, the only issue presented in this case is whether or not the evidence in the record supports a finding of guilty to the assault and battery specification.

It is noted that the testimonies by Appellant and Tindell are in conflict with each other. Appellant testified that "when they were trying to awake me I was sound asleep and I couldn't understand what was going on all of a sudden so I tried to get the light on to see who it was and then looked at Tindell standing right by my bunk and I pushed him out of the way and wanted to know what he was doing..." (R.30). Tindell, on the other hand, stated that since the Oiler could not awaken Appellant, he left his duty

station and went to Appellant's cabin in order to notify him of the watch. Since the door hook on Appellant's door could not be removed, Tindell reached in and turned on the light in the cabin. Still being unable to rouse Appellant from his sleep, Tindell knocked on the door. Tindell testified, "that woke him up. He jumped up out of the bed, like a bullet out of a gun, into the middle of the floor, in the middle of his room, throwing his head all around and looking and seeing me standing in the door, through the crack of the door. So, he proceeds to get the door open...He jerked the door open and with the heel of his hand struck me in the face, a hard blow in the face saying at the same time, you son of a bitch, you are relieved as of now'."

The Examiner, who was in a position to observe Appellant's and Tindell's demeanor on the witness stand, chose to believe the latter as to the alleged assault and battery although the Examiner did not accept Tindell's testimony with respect to the fist fight which followed. The rule is that "the jury may conclude a witness is not telling the truth as to one point, is mistaken as to another, but is truthful and accurate as to a third". Elwert v. United States, 231 F.2d 928, 934 (1956). Since the Examiner's decision to accept Tindell's version of the occurrences leading up to the fight on deck is not "arbitrary or capricious", it will not be disturbed on appeal. Commandant's Appeal Decision No. 791.

The Examiner's order suspending Appellant's license for three months plus probation is not too severe under the circumstances. Appellant was found guilty of assault and battery and fighting with another officer by mutual agreement.

A licensed officer in the American Merchant Marine has the affirmative duty to conduct himself as a gentleman and an officer and to refrain from settling his disputes physically or participating in "common brawls". The order of the Examiner will be affirmed.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 13 August 1962, is AFFIRMED.

D. McG. Morrison  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 23rd day of May 1963.